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PATENT

Attorney Docket No. 9151-18

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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re: Shelness

Group Art Unit: 1642

Serial No.: 09/885,894

Examiner: Susan Ungar

Filed: June 20, 2001

For: TRUNCATED APOLIPOPROTEIN B-CONTAINING LIPOPROTEIN
PARTICLES FOR DELIVERY OF COMPOUNDS TO TISSUES OR CELLS

February 26, 2003

Commissioner for Patents
Washington, DC 20231

SUPPLEMENTAL RESPONSE TO RESTRICTION REQUIREMENT

Sir:

The following is a response to the Restriction Requirement dated September 19, 2002, and the Notice mailed January 27, 2003.

Applicant respectfully traverses the restriction requirement. The restriction requirement states that claim 39 is a linking claim as to groups 1-6, but then enters a restriction as to said linking claim, dividing it among groups 7-75. Applicant does not understand how claim 39 can be a linking claim with respect to groups 1-6, yet itself be divided among groups 7-75. It is noted that claim 39 is a proper generic claim (MPEP 806.04(d), not presented in Markush format, linking various species (see generally MPEP 809.03). It is well settled that a claim itself may not be the subject of a restriction requirement (though it may be subject to an election of species requirement). *See, e.g., In re Weber, 198 USPQ 328 (CCPA 1978); In re Haas, 198 USPQ 334 (CCPA 1978); In re Harnisch, 206 USPQ 300 (CCPA 1980).*

To the extent the Examiner is requesting applicant to elect a single species of ApoB, applicants hereby elect ApoB23. The Official Action does not explicitly identify the **specific group** to which this species is assigned: it is believed this election is of **Group 22** and applicant hereby elect Group 22 on the understanding that such group is directed to ApoB23. This election is made with the understanding that, upon the finding of an allowable species, examination will continue with the non-elected species until all species encompassed by the linking claim are examined

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or until a non-allowable species is found. Otherwise this restriction requirement is traversed as improper for the reasons noted above.

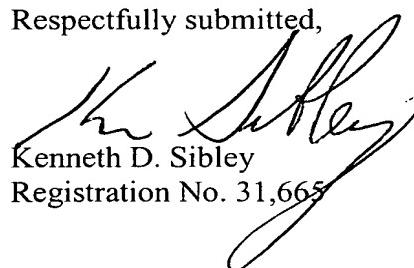
To the extent an election of species of **heterologous moiety** is required, applicants hereby elect **antibody** as the heterologous moiety. This election is made with the understanding that, upon the finding of an allowable species, examination will continue with the non-elected species until all species encompassed by the election requirement are examined or a non-allowable species is found.

To the extent an election of a species of **polar lipid** is required, applicants hereby elect **phosphatidylcholine**. This election is made with the understanding that, upon the finding of an allowable species, examination will continue with the non-elected species until all species encompassed by the election requirement are examined or a non-allowable species is found.

To the extent an election of a species of **neutral lipid** is required, applicants hereby elect **triglyceride**. This election is made with the understanding that, upon the finding of an allowable species, examination will continue with the non-elected species until all species encompassed by the election requirement are examined or a non-allowable species is found.

It is respectfully submitted that this application is in condition for substantive examination, which action is respectfully requested.

Respectfully submitted,


Kenneth D. Sibley
Registration No. 31,665

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PATENT TRADEMARK OFFICE

CERTIFICATE OF MAILING

I hereby certify that this correspondence is being deposited with the United States Postal Service as first class mail in an envelope addressed to: Commissioner for Patents, Washington, DC 20231, on February 26, 2003.


Vickie Diane Prior
Date of Signature: February 26, 2003